Filed 12/10/03 In re A.H. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re A.H., a Person Coming Under the Juvenile Court Law.	
YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, Plaintiff and Respondent, v. SARAH R., Defendant and Appellant.	C044419 (Super. Ct. No. JV02065)

Sarah R. (appellant), the mother of minor A.H. (the minor), appeals from juvenile court orders denying her modification petition and terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 388, 395.)[1] Appellant contends the juvenile

[1] Further undesignated section references are to the Welfare and Institutions Code.

court abused its discretion in denying her petition and the denial "corrupted" the court's subsequent termination of her parental rights. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Yolo County Department of Employment and Social Services detained the minor, age six months, in February 2002, following appellant's arrest for sexual abuse of the minor's half sister,[2] substance abuse, and neglect.

On May 30, 2002, appellant failed to appear for the jurisdictional hearing and the section 300 petition was sustained.

In June 2002, the juvenile court assumed jurisdiction of the minor, placed her in foster care, and ordered reunification services for the parents. Appellant's reunification plan included appearing for weekly visits with the minor, obtaining a stable residence for herself and the minor, obtaining an income, being nurturing and supportive in visits, complying with psychological treatment, and participating in a sex offender treatment program, a parenting program, dependency drug court, and drug testing.

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[2] On February 5, 2002, appellant awakened the minor's half sister, seven-year-old J., in the middle of the night and digitally penetrated J.'s vagina. Originally charged with lewd conduct, appellant apparently pleaded guilty to contributing to the delinquency of a minor. (Pen. Code, §§ 288, 272.)

In September 2002, after testing positive for methamphetamine and marijuana, appellant was referred to a residential treatment program. Appellant was unable to enter the treatment program because of her continuing criminal case.

In October 2002, appellant was arrested for threatening trailer park residents with a knife and stabbing a trailer. While incarcerated in the county jail, appellant was violent, incoherent, and had to be restrained, requiring her involuntary hospitalization. (§ 5150.) She was diagnosed as psychotic, severely manic, assaultive, sexually preoccupied, and having impaired life skills. It was discovered appellant had likely been hospitalized for mental problems more than 20 times between various counties.

On October 21, 2002, appellant was released from the hospital into transitional housing, after which she signed up for outpatient treatment.

Appellant did not visit the minor from April 29, 2002, until August 28, 2002. On August 28, the minor cried extensively, and appellant was occasionally rough and loud with her. The minor ran to the foster parent when she saw appellant. Two subsequent visits were less than positive. On October 2, appellant behaved erratically at the visitation center and was unable to complete the visit. On October 30, the minor still cried when she saw appellant, but appellant played more appropriately with the minor.

In January 2003, the juvenile court ordered reunification services to cease, referred the minor for an adoption

assessment, and set a section 366.26 hearing to terminate parental rights.

Petition for Modification

On May 13, 2003, appellant filed a "motion to modify previous order," seeking reinstatement of reunification services, contending she was in the third phase of the dual diagnosis treatment program, attended meetings three times per week, and had "almost completed" the parenting class. She stated she saw a therapist, was "on the housing list through Wayfarer," had "resolved" her criminal case, and was on probation for two years. She claimed she maintained regular and consistent visits with the minor that were positive for the minor, and alleged it was in the minor's best interest to be with her.

At the hearing on May 30, 2003, appellant testified she had been in a dual diagnosis drug treatment program for "four or five months" and had completed a parenting program. Appellant was living in a shelter in Davis and was supposed to call the Wayfarer Center each Tuesday to remain on a housing list. However, she had not contacted the center in three weeks or sought housing through other programs. She testified she was taking Haldol, lithium, Zyprexa, and Cogentin to help her "stay sane." Although diagnosed as bipolar in October, appellant testified she was previously diagnosed as a paranoid schizophrenic.

Appellant admitted her visits with the minor had been limited to one hour every other week because of her positive

drug test, and because she forgot to show up at one visit. Appellant acknowledged the minor sometimes cried at the visits because her foster mother left the room. Appellant further admitted she had not been fully compliant with the medication regimen that prevented her from going into a manic state.

The social worker testified that, although appellant was working as hard as she could, she posed an ongoing and extreme risk to the minor due to her violent behavior during manic phases and blackouts. The social worker opined six more months of services would not make a difference.

The trial court denied the section 388 petition for modification, finding the minor could not be returned within six months with additional services and it was not in the minor's best interests to grant the motion. (§ 366.3.)

DISCUSSION

I

Appellant contends substantial evidence supported her modification petition, and the trial court abused its discretion by denying it. We disagree.

"A section 388 petition may seek any conceivable change or modification of an existing order. . . . The petitioner must . . . prove by a preponderance of the evidence that there is new evidence or changed circumstances that make the change of order in the best interest of the child. [Citation.]" (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1077; see also Cal. Rules of Court, rule 1432(c), (f).) "The parent requesting the change of order has the burden of establishing

that the change is justified." (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.)

Determination of a petition to modify is committed to the sound discretion of the juvenile court and, absent a showing of a clear abuse of discretion, the decision of the juvenile court must be upheld. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Appellant contends the "changed circumstances" justifying resumption of reunification services were her beginning participation in some of the programs originally ordered -- a parenting class, substance abuse testing, mental health treatment, and visits. Although the juvenile court deemed these allegations sufficient to secure a hearing, the court was required to apply the best interest of the child standard in determining whether to grant the modification.

A number of factors should be considered in determining the best interest of the child under section 388. The court may consider: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

The minor was found to be a dependent child because appellant sexually assaulted her half sister, used drugs, and failed to provide a home, serious problems which posed a

substantial risk to the minor's well-being. As the trial court stated, "[t]he mother's problems are persistent and severe and unrelenting and cannot be remedied by further reunification services." The danger to the minor was so serious that this factor must be given great weight.

Second, the bond between appellant and the minor was relatively minimal. The minor was detained at six months old and had been with the same foster parents for nearly nine months at the time of the hearing. Appellant did not visit the minor at all for many months, due in part to incarceration and hospitalization. Following the termination of reunification services in January 2003, appellant's visits had been reduced to one hour every other week due to her own conduct. The existence of the primary bond between the minor and her foster mother and the minor's nervousness around appellant were detailed in appellant's own testimony. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 415-418.)

Finally, we examine the nature of the changed circumstances. (*In re Kimberly F., supra,* 56 Cal.App.4th at pp. 530-532.) Testimony by appellant and the social worker detailed appellant's efforts following the termination of reunification services in January 2003 through May 2003, to surmount her serious mental problems, her drug use, and her homelessness, all of which were components of the reunification plan. Since the termination of reunification services, appellant had apparently begun to take psychotropic medication somewhat regularly, and had begun to pass the majority of drug

tests. Although she attended a parenting class from April until May, she sometimes had difficulty grasping concepts. Nevertheless, appellant's history of sexual abuse of the minor's half sister, her violent behavior, and her blackouts during manic phases all demonstrated that a lengthy period of therapeutic maintenance, drug abstinence, and intensive support would be required before it could be said that appellant posed no danger to the minor, much less that it would be in the minor's best interest to reunite with her mother. Appellant's problems were so deep that significant change in the few months since reunification services had been terminated was nearly impossible. Indeed, change had simply begun; it had not been accomplished. (See *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.)

In assessing the best interests of the child after reunification services have been terminated, the juvenile court must look to the needs of the child for permanence and stability. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) The modification sought -- more months of reunification services -- would result in a further delay before stability and permanence would be achieved for the minor. "A petition which alleges merely *changing* circumstances and [if granted] would mean delaying the selection of a permanent home for a child[,] to see if a parent[] who has . . . failed to reunify with the child[] might be able to reunify at some future point, does not promote stability for the child or the child's best interests."

(*In re Casey D.* (1999) 70 Cal.App.4th 38, 47, italics added.) We find no error.

II

Appellant also contends the section 366.26 hearing was "corrupted" by the erroneous denial of the section 388 motion. It was stipulated that testimony presented at the section 388 motion would be used for the section 366.26 hearing. Because the trial court did not abuse its discretion in denying appellant's supplemental petition, there was no error in the juvenile court's order terminating her parental rights.

DISPOSITION

The juvenile court's orders are affirmed.

BUTZ, J.

We concur:

SCOTLAND, P. J.

MORRISON, J.